No. 80-3644

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOHN R. STEVENSON, et al.)		
Plaintiffs-Appellants)		C-1-77-122
vs.)		
GENERAL ELECTRIC COMPANY,) et al.,		
)		ORDER
Defendants-Appellees)		

BEFORE: ENGEL and CONTIE, Circuit Judges; and TAYLOR, District Judge.*

This appeal stems from a class action employment discrimination suit brought in 1977 under Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000e et seq., and under 42 U.S.C. §§1981 and 1985, by present and past black employees at the General Electric jet engine manufacturing facility in Evendale, Ohio. The defendants/appellees are General Electric (GE) and the two unions which represent hourly employees in the Evendale

* The Honorable Robert L. Taylor, United States District Judge, Eastern District of Tennessee, sitting by designation.

plant: the United Auto Workers (UAW) and the International Association of Machinists.[1/]

The plaintiffs' claims against the unions assert that grievances of black members in the UAW were treated in a less favorable manner than those of white members and that both unions failed to negotiate fairly on behalf of their black members. The heart of the plaintiffs' case, however, implicates GE's procedures and practices with regard to promotions within the UAW and IAM bargaining units and with regard to transfers from the UAW unit to the IAM unit. The plaintiffs alleged both disparate impact and disparate treatment claims with regard to promotions and transfers.

Following a non-jury trial, the district court found for the defendants on all counts. The plaintiffs' claims on appeal can be divided into five broad categories. They contend that the district court erred in: (1) limiting discovery; (2) making certain evidentiary rulings; (3) its factual and legal conclusions with regard to the claims against the unions; (4) its factual

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1/ The plaintiffs named the union locals and internationals as defendants, with the bulk of the claims directed against the locals. For simplicity, we will refer to the locals and internations collectively as the UAW and IAM.

and legal conclusions with regard to discrimination in promotions and transfers; and (5) its factual and legal conclusions with regard to the individual claims of discrimination.

BACKGROUND

GE has manufactured jet engines at its Evendale plant since 1948. In 1949, the National Labor Relations Board conducted proceedings to determine the appropriate bargaining unit or units for hourly employees at the plant. GE sought to have all hourly employees, including clericals, defined as a single bargainint unit. However, the UAW sought to represent all production workers, skilled and unskilled, while the IAM sought to represent only skilled workers. The National Labor Relations Board decided that there should be two bargaining units. The UAW was duly selected to represent unskilled production workers and the IAM was selected to represent skilled workers.

The UAW and the IAM have since negotiated separate collective bargaining agreements with GE but the separate contracts have always contained similar grievance procedures. Under both contracts, an employee's grievance

goes through a three-step procedure where representatives of the company and the union attempt to resolve the grievance. If no agreement is reached, the parties may demand final and binding arbitration. Prior to 1976, several subjects, including race discrimination, could only be arbitrated by mutual consent.

The collective bargaining agreements of both unions also contained similar seniority provisions. The key provision with regard to seniority is that an employee who transfers from a position in one bargaining unit to a position in the other bargaining unit must forfeit his competitive seniority.[2/]

GE has 130 job classifications, which are separated into 14 pay grades. Within the pay grades, certain positions are UAW represented and others are IAM represented. There are fewer IAM positions, but they tend to be higher paying and more stable. The lowest paying positions are in Grade 12, the highest paying are in Grade 25. Over

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2/ Competitive seniority refers to priority in layoffs, promotions, and upgrades. It does not affect vacations, retirement, or other fringe benefits. Any reference to "seniority" in this order is to competitive seniority.

80% of all newly hired employees enter GE's workforce at Grade 12. These employees then receive automatic promotions to Grades 13 and 14, with further promotions determined on the basis of seniority and merit. It is the promotions to Grade 15 and above which are at issue in this case.

GE utilizes and has utilized throughout the relevant time period for this suit a pre-registration system for promotions. Under this system, an employee files a request for an upgrade to any particular position or positions whenever the employee becomes interested in such positions. Position vacancies are not posted since it is irrelevant whether a vacancy actually exists under the pre-registration system. When a vacancy does occur, those employees who have filed upgrade requests and met the minimum qualifications for the position will be considered.

The pre-registration system works as follows. On the upgrade request form, the employee lists his relevant work experience and shift preference. The form directs an employee who does not know the qualifications for a position to consult his foreman, who is supplied

with a "Minimum Criteria Booklet." This booklet lists the minimum qualifications for each job classification.

The upgrade request is reviewed by an employment specialist who compares the relevant work experience listed on the form to the minimum criteria for the job. If the applicant is qualified, the upgrade request is marked "will consider" and is filed. When an opening for that position occurs, the senior qualified employee with an upgrade request on file is interviewed by the supervisor for the vacant position. In addition to the interview, a written test may be given. There is no "passing" score on the test--an interviewer may offer the job irrespective of the test score. Some positions also require practical tests related to skills necessary for those positions.

The supervisor does not interview all qualified applicants and pick the best qualified among them, but rather is required to take the most senior applicant capable of performing the job. If the most senior employee is rejected, the interviewing supervisor must file a written report to the employment specialist, who reviews the decision. Rejected applicants may also file

grievances. Black employees have the additional option of appealing to GE's Minority Relations office.

In order to help employees to qualify for upgrades, GE offers various training programs. These programs are open to all employees.

DISCUSSION

I. Discovery

The plaintiffs raise several issues with regard to discovery. One of these contentions relates to the plaintiffs' effort to compel GE to produce its Affirmative Action Plans for the period 1973 to 1978. The district court denied the motion to compel on the grounds that the privileged information in the reports outweighed the plaintiffs' need to see them.

A trial judge has wide latitude in discovery matters, and should only be reversed for clear abuse of discretion. H.K. Porter Co., Inc., v. Goodyear Tire & Rubber Co., 536 F.2d 1115, 1119 (6th Cir. 1976). We find no such abuse of discretion here. Employers are required by federal law to submit Affirmative Action Plans in order to receive federal contracts. The usefulness of such reports depends to a large degree on the

employer's subjective evaluations of its own progress. Making such reports subject to wholesale production in litigation would surely have a chilling effect on the employer's candor and greatly diminish the value of the reports. See Jamison v. Storer Broadcasting Co., 511 F. Supp. 1286 (E.D. Mich. 1981); Nash v. City of Oakwood Ohio, 90 F.R.D. 633 (S.D. Ohio 1981); and O'Connor v. Chrysler Corp., 86 F.R.D. 211 (D. Mass. 1980).

Of course, the plaintiff must have access to the factual data relating to the employer's hiring practices. In this case, the plaintiffs had access to this information through GE's personnel files and other information obtained through discovery. Since the plaintiffs had full access to the data relevant to this action, we find no prejudice and no reversible error in refusing to compel production of the Affirmative Action Plans.

We likewise find no merit in the balance of the plaintiffs' claims relating to discovery.

II. Evidentiary rulings

Evidentiary rulings by a trial court as to the exclusion or admission of evidence constitute reversible

error only if a substantial right of the party is affected. Fed. R. Evid. 103(a). The plaintiffs challenge several of the district court's evidentiary rulings but we find no reversible error.

One claim raised by the plaintiffs is that the district court erred in excluding evidence of individual discrimination which occurred prior to the applicable limitations periods for the discrimination claims. It is well-settled that current discrimination cannot be proven by reference to acts of pre-limitations discrimination.[3/] United Air Lines Inc. v. Evans, 431 U.S. 553, 558 (1977). Such evidence may be admissible as background evidence. Id.

Pre-limitations evidence may also be admissible if it is relevant to an issue in the case. See e.g. Detroit Police Officers' Ass'n v. Young, 608 F.2d 671 (6th Cir. 1979), cert. denied, 452 U.S. 938 (1981). The district court consistently held that it would admit pre-limitations evidence for the purpose of proving that the defendants'

3/ Even if it were admissible, evidence of a few isolated instances of discrimination over a twenty year period would have little probative value in establishing a pattern or practice of racial discrimination. Teamsters v. United States, 431 U.S. 324, 336 (1977).

seniority system was not bona fide. See Teamsters v. United States, 431 U.S. 324 (1977). We find that the district court did not abuse its discretion in excluding evidence of pre-limitations discrimination which was not relevant to any issue in dispute.

Another evidentiary ruling cited as error by the plaintiffs is the district court's refusal to allow them to introduce UAW Exhibit 341 on rebuttal. We find no error. The UAW had intended to introduce the exhibit during its presentation but did not do so when it was demonstrated that the study did not accurately reflect the race of grievants. Nothing could be gained by allowing either party to introduce evidence with such a critical flaw.

The plaintiffs also contend that the district court improperly excluded hearsay statements made by Edward Geiss and William Garnes, both deceased. The plaintiffs argue that statements made by Geiss and Garnes were admissible under Rule 804 of the Federal Rules of Evidence because the declarants were unavailable. We find that the district court did not abuse its discretion in excluding the evidence. The dead declarants were obviously

unavailable. However, the plaintiffs had to establish that one of the exceptions under Rule 804(b)(1-5) applied before the hearsay statements could be admissible. The plaintiffs failed to do this and the district court properly exercised its discretion in excluding the evidence.

We find no merit in the balance of the plaintiffs' claims with regard to evidentiary rulings.

III. Claims against the UAW and IAM

The plaintiffs claimed that the UAW and IAM engaged in a pattern and practice of discrimination against black members. More specifically, they claimed that the UAW did not process grievances filed by black employees in the same manner as those filed by white employees, that the UAW excluded black members from speaking at union meetings, and that the UAW and IAM did not negotiate fairly on behalf of their black members.

The district court made detailed findings of fact with regard to the grievance procedures, and we find that these findings are not clearly erroneous. The district court found that the grievance procedure at GE was marked

by long delays but that the delays were the same for black and white employees. The district court also found no evidence indicating that grievances filed by black employees were processed differently than those filed by white employees.

With regard to preventing black employees from speaking at union meetings, the district court found that one committeeman utilized a parliamentary technique to prevent black and white employees from presenting their views. The court found the actions of the one committeeman insufficient to establish a pattern or practice of racial discrimination.

The plaintiffs' claim that the unions failed to negotiate fairly on behalf of black members is based on the fact that, prior to 1976, race grievances were only arbitrable upon consent by GE. The district court found no evidence of a failure to negotiate fairly and we affirm.

We affirm the district court's conclusion that the plaintiffs failed to prove any of their claims against the unions.

IV. Claims against GE

The plaintiffs claimed that GE has engaged in a

pattern or practice of racial discrimination against black employees with regard to upgrades within the UAW[4/] and from the UAW to the IAM. The plaintiffs also attached GE's promotional and training system as having a disparate impact on black workers.

Looking first at upgrades within the UAW, the district court found that black employees comprised approximately 20% of the UAW work force in the plant during the relevant time period. An analysis of all upgrades to Grade 15 and above during that period revealed that black employees received 24.87% of the upgrades. Since discrimination could occur in particular pay grades without resulting in any overall disparate impact, the district court further analyzed each pay grade. Only two pay grades exhibited less balck promotions than expected, Grades 20 and 23. In Grade 23, which only had one job classification, the district court found that no black employee had ever been rejected after interviewing for the position. In Grade 20, the district court examined each job classification and found no evidence of racial discrimination.

4/ The plaintiffs presented no evidence as to upgrades within the IAM.

The plaintiffs contend on appeal that they established that black employees within the UAW were not upgraded as fast as white employees. We find no merit in this contention. The only evidence relied on by the plaintiffs in support of this claim was a statistical study which the plaintiffs admitted was factually flawed. The study was further flawed in that it did not distinguish between promotional movements and seniority-controlled movements. See Alexander v. Aero Lodge No. 735, etc., 565 F.2d 1364 (6th Cir. 1977), cert. denied, 436 U.S. 946 (1978).

The evidence as to upgrades through transfers from the UAW unit to the IAM unit similarly failed to show any disparate impact on black employees which would support a claim of a pattern or practice of discrimination. During the relevant time period, approximately 5% of the employees seeking to transfer into the IAM were black. During that period, 5% of the applicants accepted were black. The plaintiffs failed to introduce any substantial evidence that black employees were discouraged from applying. See Teamsters v. United States, 431 U.S. 324, 361-72 (1977).

The plaintiffs contend that the fact that the IAM has a lower percentage of black employees than the UAW supports an inference of racial discrimination. We initially note that there is little evidentiary support in the record to support the plaintiffs' premise that the IAM unit has a lower percentage of black workers. Even assuming that premise to be true, it is, by itself, inadequate to establish a prima facie case. The jobs in the IAM unit required specialized skills and training and a mere disparity in numbers is inadequate to establish a pattern or practice of racial discrimination absent a showing of a pool of black workers qualified for IAM jobs. Grano v. Dep't of Dev. of City of Columbus, 637 F.2d 1073, 1078 (6th Cir. 1980).

The plaintiffs also contend that the seniority system, which requires forfeiture of competitive seniority upon transferring from one bargaining unit to another, discriminated against black workers. Application of a bona fide seniority system is a defense against a showing of disparate impact even if the seniority system perpetuates the effects of past discrimination. 42 U.S.C. §2000e-2(h); Teamsters v. United States, 431 U.S. 324, 348-355 (1977).

Assuming that the seniority system was in issue, [5/] the findings of the district court clearly establish that the seniority system was bona fide. The Supreme Court has recently set out the key inquiry in determining whether a seniority system is bona fide:

> '[A]bsent a discriminatory purpose, the operation of a seniority system cannot be an unlawful employment practice even if the system has some discriminatory consequences.' Thus, any challenge to a seniority system under Title VII will require a trial on the issue of discriminatory intent: Was the system adopted because of its racially discriminatory impact?

Pullman-Standard v. Swint, _____ U.S. _____, 102 S. Ct. 1781, 1784 (1982). (citation omitted).

The district court found that the dual bargaining units and seniority systems were established in accordance with the order of the National Labor Relations Board, and that there was no evidence that the system was adopted because of any racially discriminatory intent. We note that there is no evidence that the system is anything but

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5/ As a defense, it only becomes an issue if the plaintiff establish a prima facie case. The findings of the district court indicate no disparate impace in transfers and no evidences that black workers were discouraged from transferring.

neutral in its application. The plaintiffs do not contend that white workers are allowed to transfer without losing their competitive seniority. There was also no evidence that the seniority system was maintained or negotiated for with discriminatory intent. Finally, we note that the division between skilled and unskilled workers was not unusual in heavy industry, as this court recently noted in Taylor v. Mueller Co., 660 F.2d 1116 (6th Cir. 1981).

The plaintiffs also claim that GE's upgrading procedures have a disparate impact on black workers—that is, the procedures are neutral in themselves but have adverse effects on black employees. The discussion above establishes that the "bottom-line" result as found by the district court was that the selection process had no disparate impact on black workers seeking upgrades. In the instances where the court did find a disparity, the defendant successfully articulated legitimate non-discriminatory reasons for the disparity, and these reasons were not demonstrated to be pretextual.

However, our inquiry does not end with the "bottom line" finding of no disparate impact. Components of the selection process which serve to unfairly eliminate black

workers from consideration for upgrades may violate Title VII despite the absence of a showing of disparate impact overall. Connecticut v. Teal, _____ U.S. _____, 50 U.S.L.W. 4716 (U.S. June 21, 1982). Such is not the case here. The district court analyzed each of the components of the selection process and found no evidence of discrimination. The district court found no evidence that the minimum criteria had a disparate impact on black employees or that the criteria were not job related. The district court also found no evidence that the use of the pre-registration system had any disparate impact on blacks. The plaintiffs argued on appeal that a system which does not post openings is per se discriminatory. This argument has no basis in law or logic. Since there was no showing of disparate impact, the fairness or wisdom of the system is GE's concern, not this court's. In any event, the pre-registration system seems to be fairer in that it does not rely on posting--employees do not have to constantly check to see if desired positions are open. The district court also found GE's training programs, interviewing procedures, and testing to be non-discriminatory.

With regard to all of the plaintiffs' claims against GE, the district court found that the plaintiffs failed to prove the allegations of their complaint. We have carefully examined the massive record on appeal and we find nothing to detract from the district court's factual findings or conclusions. The district court's findings are not clearly erroneous and we affirm.

V. Individual claims

The district court found the individual claims to be either time barred or unsupported by any evidence, and concluded that the individual plaintiffs had not met their burdens of proof. We find these findings not to be clearly erroneous and affirm the district court with regard to the individual claims.

Accordingly, the judgment of the district court is affirmed in all respects.

ENTERED BY ORDER OF THE COURT

Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN R. STEVENSON, et al.,)
Plaintiffs)
v.) No. C-1-77-122
GENERAL ELECTRIC COMPANY, et al.,)
Defendants)

O R D E R

This matter is before the Court following the presentation of evidence and testimony and the submission of memoranda by the plaintiffs and the several defendants. Plaintiffs in a class action proceeding assert discriminatory treatment of black employees in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and violations of 42 U.S.C. §§1981, 1985 and 1988. Pursuant to Rule 52 of the Federal Rules of Civil Procedure, the Court does submit herewith its findings of fact and conclusions of law.

I

FINDINGS OF FACT

A. BACKGROUND

1. Plaintiffs John R. Stevenson, John E. Cooper, Charles F. Sloan and Albert Cooper were at the time of the filing of this suit employees or former employees of defendant General Electric at its Evendale, Ohio facility. All plaintiffs are black males and seek to represent a class conditionally certified by the Court and described as follows:

> All past, present and future black employees at the Evendale, Ohio plant of the General Electric Company, who in promotion, transfer or seniority might have been discriminated against since July 1, 1965 or might be discriminated against in the future by the General Electric Company or by the International Union of Automobile, Aerospace and Agricultural Implement Workers (UAW) or by Local Union 647 UAW, or by Local 912 International Association of Machinists (AFL-CIO).

(Order of September 26, 1977, Document No. 34).

During the relevant time period[1] black employees constituted approximately 20% of the UAW hourly work force (Tr. 2757).

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[1] The term, "relevant time period," does not refer to the period of time beginning July 1, 1965. It refers instead to the period of time allowable for judicial consideration in accordance with appropriate statutes of limitation. See Findings A8 and A9, infra.

2. Defendant General Electric Company is a New Yrok corporation engaged in interstate commerce with facilities at Evendale, Ohio which develops and manufactures jet engines. The Evendale facility at all times relevant herein has employed in excess of 10,000 employees. The development and manufacture of jet engines inherently has at least two results that affect the relationship between defendant General Electric and its employees. First, jet engines require a work force of highly skilled employees. Second, demands for such engines, both commercial and military, tend to fluctuate widely from year to year. Such fluctuations are dictated by considerations beyond the control of the defendant General Electric.

3. The Evendale facility is located north of the City of Cincinnati in an area identified as the Milcreek Valley. The plant was constructed immediately prior to World War II for the production of airplane engines by the Wright Aeronautical Corporation. The site has been occupied by General Electric continuously since 1948.

4. Defendant International Union of United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Local 647 of the United Automobile,

Aerospace and Agricultural Implement Workers of America (Local 647) are labor organizations as defined in 42 U.S.C. §2000e(d) and (e). The UAW is an international union containing several hundred thousand members. Local 647 is a part of the UAW and represents for collective bargaining purposes certain employees at the General Electric Evendale plant.

5. The International Association of Machinists (AFL-CIO) (IAM) and Lodge 912 thereof are labor organizations which bear the same relationship to each other as UAW and Local 647.

6. In 1949 both the UAW and the IAM sought to represent employees at the General Electric plant. The NLRB determined that there should be two separate bargaining units and directed elections in each (General Electric Company 86 NLRB 327, 1949). As a result of the elections of the defendant UAW and Local 647 and defendant IAM and Lodge 912 were each certified as the representatives of separate bargaining units. UAW was certified to represent production and service operations, inspection service and the fabrication and welding of production components (Tr. 247). IAM was certified to represent developmental machinists, tool makers and maintenance skilled craftsmen

engaged in plumbing, pipefitting, electrical machine repair and millwright classifications (Tr. 246). Each collective bargaining unit maintains a separate contractual relationship with General Electric.

7. The collective bargaining agreements each have provisions detailing the seniority rights within that unit. Certain benefits, such as vacations, pensions, and income protection plans provided by the various labor agreements are controlled by an employee's total service with General Electric. His competitive seniority in consideration of promotion or upgrades, lay-offs, bumping, and recalls are determined by his employment within the specific bargainint unit. Only these rights are lost upon the transfer from one bargaining unit to another.

8. Plaintiff John Stevenson filed a charge of discrimination against defendant General Electric with the EEOC on September 2, 1969. He charged violation of Title VII of the Civil Rights Act of 1964. A "Notice of Right to Sue" was issued November 30, 1976 and this action was commenced March 2, 1977. The filing was timely and preserved plaintiff's and plaintiff's class recourse to the United States District Court. The above dates are relevant in determining what evidence may appropriately be received in

consideration of plaintiff's claims.

In 1969, 42 U.S.C. §2000e-5(d) required that Title VII charges be filed with the EEOC within ninety days of the alleged act of discrimination. Accordingly, the Title VII claims in this matter can only be directed to acts which occurred subsequent to June 4, 1969.

9. 42 U.S.C. §§1981 and 1985 do not contain similar time restrictions. Both claims are governed by appropriate state statutes of limitation. Claims under §1981 which arise in Ohio are governed by a six-year statute of limitations (Mason v. Owen-Illinois, Inc., 517 F.2d 520 (6th Cir. 1975).

In view of the determination by the Supreme Court of the United States in Griffin v. Breckenridge, 402 U.S. 88 (1971), it would appear that Section 1985 deals essentially with conspiracy to violate other civil right statutes including §1981. Accordingly, the Court will apply a six-year statute of limitations.

Application of the foregoing to the facts of this case requires the imposition of the following beginning dates: Evidence regarding Title VII claims are limited to acts subsequent to June 4, 1969. Evidence regarding

42 U.S.C. §1981 claims are limited to acts subsequent to March 2, 1971. Evidence of §1985(3) claims are also limited to acts subsequent to March 2, 1971.[2]

B. CLAIMS AGAINST IAM

1. The plaintiff has asserted discrimination claims against Lodge 912 of the IAM under 42 U.S.C. §§1981, 1985 and 1988 and failure of fair representation claims under 29 U.S.C. §§151 and 185.[3] No evidence[4] of a failure of fair representation or a failure to negotiate claims was presented against defendant IAM.

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[2] In view of the Court's determination that no evidence of a conspiracy was established at any time, the time limitation on §1985(3) claims is irrelevant. See Conclusion of Law C, infra.

[3] Claims under Title VII of the Civil Rights Act of 1964 were dismissed by stipulation against this defendant. See document 143.

[4] The phrase, "no evidence" will be used frequently in these findings. It is intended to be equivalent to a finding that plaintiffs have failed to sustain the appropriate burden of proof imposed upon them in employment discrimination matters.

2. Evidence regarding alleged violations of 42 U.S.C. §1981 involved incidents occurring prior to March 2, 1971 and in accordance with the analysis in Finding of Fact A-9 were excluded from evidence. No evidence of a conspiracy at any time involving defendant IAM was ever presented. As a result the Court did at the conclusion of the plaintiffs' case relieve defendant IAM from the presentation of a defense, but retained such defendant in the event a remedial Order would require its participation. The disposition of all claims against this defendant may be found in Conclusion of Law G.

C. CLAIMS AGAINST UNITED AUTO WORKERS AND LOCAL 647

1. Plaintiffs have asserted against Local 647 claims under 42 U.S.C. §§1981, 1985 and 1988, 42 U.S.C. §2000-e and 29 U.S.C. §§151 and 185. Against defendant United Auto Workers the same claims have been asserted with the exception of any claims under 42 U.S.C. §2000e. Plaintiffs' specific complaints against Local 647 may be summarized as an assertion of a conspiracy with General Electric; a failure to deal with grievances of black employees in an appropriate manner; a failure to negotiate in good faith and a failure to give black members

of the Union a fair hearing at union meetings.

2. As noted above, there has been a complete failure to establish any acts of conspiracy with either General Electric or with IAM that would give rise to a claim under 42 U.S.C. §1985(3).[5]

3. In theory a grievance should, if necessary, follow a logical progression from consideration by a shop steward with a first line supervisor to the formalities of arbitration between union and management before a disinterested umpire. However, this pristine mechanism merely provides the framework for processing grievances at General Electric.

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5 The seminal case on the consideration of §1985 claims is Griffin v. Breckenridge, supra. In the Breckenridge case the Supreme Court pointed out four specific requirements to support a claim. Those are: (1) a conspiracy; (2) for the purpose of depriving a person or class of equal privileges and immunities; (3) an act in furtherance of the conspiracy committed or caused to be committed by a conspirator; and (4) whereby the person or class was injured . . . or deprived of a right or privilege of United States citizens. The lack of any evidence at any time supporting a conspiracy renders it unnecessary for the Court to consider the requirements of a §1985 claim other than to hold that no cause of action has been proved against any defendant under such section.

4. The grievance procedure at the General Electric plant followed the pattern of such grievance procedures generally. Grievances by their very nature lack the formality of complaints filed in the Office of the Clerk of the United States District Court. They are prepared and filed by individuals who frequently lack formal education of college level. They are often prepared in anger or in haste. They are not always grammatical. They may require interpretation and the vast majority are disposed of on the shop floor. Grievances, however, are understood by the parties who are affected by them and as a pragmatic matter, solve the problems involved.

The procedures at General Electric appear to follow the above pattern and are no better or no worse than those of plants of comparable size. The attention paid to grievances by shop stewards and committeemen vary with each steward and each committeeman. Some were preserved, some were not. Some were handled expeditiously, some were not.

5. No evidence was presented by either side as to the number of grievances actually filed during the relevant period. Indeed, such figure is probably not obtainable. Evidence was produced, however, that the grievances during

such time period were, at least, numerous. Testimony bearing upon the substantial number of grievances indicated that during the relevant time period the local union dealt with at least 10,000 written grievances (Tr. 2754-55).

6. Local 647 is organized with eleven committeemen spread over the three shifts of work. One of such committeemen estimated that he alone had over 2,800 grievances pending at one time (Tr. 2956). Other than to indicate the magnitude of grievances, it serves little purpose to seek a completely accurate count. While recognizing that the figure is probably substantially too low, the Court will assume a totality of 10,000 grievances.

7. During the relevant time period, Local 647 arbitrated fifteen grievances. Fourteen grievances involved individuals, ten white employees, four black employees (Tr. 2753).[6] The processing of grievances

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[6] While the foregoing figure was noted primarily to demonstrate how few grievances ever reached the arbitration phase, it might be pointed out that while blacks constituted approximately 20% of the bargaining unit (Tr. 2757), over 28% of the arbitrations involved black members. In view of the small numbers involved, the Court does not deem this figure to have any significance.

at the General Electric plant seems to be inordinately slow. The delays, however, were the same for black and for white employees. In some instances, delay occurred because the number of filings overwhelmed the grievance procedure (Tr. 2806-07) and in other instances, delay seemed to be a technique of negotiation employed by committeemen in an effort to obtain a favorable result. Grievance procedures do not lend themselves to judicial oversight. Appropriate inquiry is whether or not grievances by black employees were treated differently than grievances by white employees. In the absence of any evidence so indicating, the processing of grievances is not relevant to the case at hand. Other than isolated instances of failure to file grievances by committeemen (Tr. 529 and 3540-41), no evidence was presented by the plaintiffs on this issue.[7]

8. Plaintiffs assert that Local 647 improperly handled grievances in instances where the grievants were black. To support this claim, the plaintiffs presented testimonial evidence of individuals who were dissatisfied

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[7] Even if a steward deemed a grievance meritless, a grievant could, and in some instances did, file a grievance on his own.

with the disposition of their grievances. Fewer than 50 specific grievances were discussed by those witnesses.

The grievances themselves presented no pattern of discrimination against blacks by the union. Many of the grievances were filed prior to or referred to events which occurred prior to the applicable time frame of this litigation. For example, one witness testified that he filed a grievance in 1974 regarding 1961 events (Tr. 1158). Not all of the grievances testified to alleged racial discrimination (Tr. 527, 533, 1158, 3541). Some witnesses also testified about grievances in which they were not the grievants. This hearsay testimony had little value for the Court.

9. No evidence was presented that the International Union was ever involved in the processing of grievances. A right does exist within internal union remedies to seek the assistance of the Executive Board of the International Union in the processing or failure to process grievances. No evidence was presented that any of the class plaintiffs protested the failure of Local 647 to properly prosecute a grievance (Tr. 3025). No evidence was presented indicating any responsibility on the part of the International

Union to intervene in the processing of grievances at the General Electric plant.

10. The treatment of Wilber Downs as Chairman of te Fair Practices Committee is asserted by plaintiffs as evidence of discriminatory treatment by Local 647. Evidence disclosed that Downs was frustrated in his effort as Chairman of the Fair Practices Committee, but the evidence likewise indicated that the activities of such committee interfered with the grievance procedure (Tr. 1257). The International Union has maintained since 1946 a Fair Practices and Antidiscrimination Department and William Oliver, a black, has been either director or co-director since that time. At no time was any complaint received by him either from a member of Local 647 or from Wilber Downs regarding discrimination by the local union.

The International Union published a handbook entitled Local Union Fair Practices Committee (Plaintiffs' Exhibit 49). The handbook does not permit the Fair Practices Committee chairman to negotiate with company supervisors (Tr. 2996). Instead, the chairman of the Fair Practices Committee is expected to advise, counsel and assist elected committeemen (Tr. 2998).

11. Evidence was presented of a technique by at least one committeeman to prevent the discussion at Union meetings of black discriminatory problems. His actions were deliberate and purposeful and while he had taken similar action in situations involving white members, the result of his activities was to frustrate black members of the union from having a full airing of their complaints.

Union meetings are not always conducted with the decorum associated with a society of parlimentarians. A denial, however, of a union member to address the other Union members and to have his complaint heard is both a violation of the First Amendment and a violation of his rights under the Landrum-Griffith Act (29 U.S.C. §411(2).

The failure of Local 647 or the International Union properly to discipline the member in question involves such entities also in violation of plaintiffs' rights. These acts, however, standing alone, are insufficient to establish discrimination against the class which plaintiffs seek to represent. They are acts which should invoke disciplinary action within the Union. The failure to do so may bear upon future bona fides of these defendants.

12. During a strike in 1969 approximately 100 local members crossed picket lines. Black member Herbert Green was fined $100.00 as a result. No evidence was presented that his punishment was different from that given to white members who likewise crossed picket lines. To the contrary, evidence indicated that all persons who crossed the line were dealt with uniformly (Tr. 2835).

Other than the foregoing isolated instances, no evidence was presented that would indicate a pattern or policy of discrimination by Local 647 against black members thereof.

D. CLAIMS AGAINST GENERAL ELECTRIC

1. Against defendant General Electric the plaintiffs have asserted eighteen types of discriminatory treatment which can conveniently be categorized as "asserted disparate treatment." Within the eighteen specifications of disparate treatment plaintiff does not include claims under 42 U.S.C. §§1985 and 1988 (F.P.T. Order, Item IV A(1), pp. 3, 4 & 5). In view, however, of the Court's determination of the conspiracy charge under §1985 such disposition need not be repeated here.

2. During all of the relevant time period herein, hourly employees at General Electric could at any time request consideration for a particular job occupation. It was not necessary that there be a job opening in order for an employee to express his interest. Prior to 1974 a promotion application was made on a "Request for Upgrade" (RFU Form). In 1974 the title of the form was changed to "Self-Nomination for Upgrade" (SNU), but the procedure remained the same.

Jobs at General Electric are identified with an "R" for UAW jobs and an "M" for IAM jobs. The categories range from the entry level of R-12 in UAW jobs to R-24 and from M-15 as an entry level in IAM jobs to M-25. Aside from certain automatic upgrades in the R-12 through R-14 categories, all job classifications have written minimum experience prerequisites known as "minimum criteria" which must be met prior to consideration for a promotion. There was no evidence presented that the criteria have a disparate impact on black employees or that they were not job related.

3. Details of the promotion system were widely disseminated through the plant and no evidence was presented that plaintiffs or plaintiffs' class were ignorant

of the manner in which a request for promotion could be made. Evidence was presented that approximately 26,000 SNU's had been filed since 1974 (Tr. 1866). No evidence was presented that a disproportionate number of such SNU's had been filed by white employees.

4. All SNU's after filing are considered by an hourly employment specialist. If he determines that the listed experience does not meet the minimum criterion, the SNU is marked "Not Qualified." If the marked experience would be sufficient but cannot be verified, it is likewise marked "Not Qualified." Where there is either a lack of qualification or a lack of verification, the employee is given an opportunity to obtain verifying documents. If he obtains such documents, the SNU is then marked "Will Consider" along with those SNU's where the minimum criteria has been met. In all instances, the disposition of the SNU is made known to the employee.

5. When an opening in the job classification occurs, the most senior employee with "Will Consider" SNU on file is referred for an interview. In certain instances, a test must be given prior to interview, but

such tests are written, not oral, with the exception of those tests involving tool making and welding proficiency. With the exception of the welding proficiency test, no employee is denied an interview because of test results. Applicants who are rejected because of interview may file a grievance, seek review through his supervisor, the hourly placement office, or General Electric's Minority Relations Office at the Evendale plant.

The foregoing procedures are facially neutral and contain no restrictions on the equal promotion of white and black employees.

6. General Electric provides training programs at its own facilities. Both standard training courses and advanced or special training courses are provided. Information regarding such training is contained in a pamphlet entitled "Your Guide to Growth" made available to employees (G.E. Exhibit 27).

Between 1969 and 1977 black employees constituted 29.79% of participants in standard training courses and 34.8% of special training courses (G.E. Exhibit 34, Tr. 2429).

7. In addition to the foregoing, there is maintained an individual developmental program (IDP) at local

vocational schools and colleges (Tr. 2423-24). Between 1973 and 1975 black employees constituted 32% of the participants in this program and 49% of the funds that were expended in the IDP program were for black participants (G.E. Exhibit 33).

8. As previously noted in Finding of Fact A-1, black employees at General Electric in the UAW bargaining unit constituted approximately 20% of the total hourly employees in such unit. Promotions therefor to the level of R-15 and above should approximate the same percentage.[8]

An analysis of the promotions to R-15 through R-24 from January 1, 1969 to March 2, 1977 is as follows:

Labor Grade Promoted To	Total Promotions	Black Promotions	% Black Promotions
R-24	1	1	100.00
R-23	11	0	0.0
R-22	0	0	0.0
R-21	51	13	25.49
R-20	136	17	12.50
R-19	180	33	18.33
R-18	235	47	20.00
R-17	437	110	25.17
R-16	185	52	28.11
R-15	670	201	30.00
Totals	1906	474	24.87

(G.E. Ex. 26, Chart III

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8 Promotions below R-15 are usually automatic based upon application and seniority (Tr. 2213).

9. With the exception of Labor Grade R-20, where the black percentage of promotion was 12.50% and Labor Grade R-23, where the black percentage of promotion was 0%, all other grades included a percentage approximating or exceeding 20%. Job Grade R-23 contains only one occupation - tool and gauge inspector. No evidence was presented that any black employee was rejected after interview for such occupation.

Detailed evidence regarding the R-20 classification is as follows:

CHART IV

G.E. Exhibit 26

PROMOTIONS INTO LABOR GRADE R-20
OCCURRING BETWEEN 1/1/69 and 3/2/77
BY OCCUPATION AND RACE 9/

Occupation Number & Title	Total	Black	Black %
20540-Precision Boring Machines	23	9	39.1
a 03220-Ultra Sonic Technician	6	0	0.0
46070-Automatic Technician-A	3	1	33.3
a 24131-Lathe-N/C	32	2	6.3
a 24140-Om-Ni-Mill-N/C SU&O	2	0	0.0
a 25005-Milling Machine-Multi-N/C	1	0	0.0
b 24021-Boring Mill-Vertical-N/C	13	2	15.4

9/ The interior footnoting of the above chart was not part of the exhibit but rather a result of testimony by Neil Churchill.

c	17021-Tester-Electronic	9	1	11.1
d	47020-Balancing Machine SU&O	3	0	0.0
e	57030-Welder Production	43	2	4.7
f	01136-Group Leader, Inspection Line	1	0	0.0
	TOTAL . . .	136	17	12.50

a - No black rejections

b - 1 black rejection out of five

c - 2 out of 4 blacks rejected; 17 out of 30 whites rejected

d - 3 out of 6 blacks rejected

e - 10 black applications rejected; 56 whites rejected

f - Appointed by management; RFU/SNU not applicable

An examination of the above chart reveals no rejection because of race which is in the final analysis of the dispositive question.

10. Transfer of UAW employees to the IAM bargaining unit has always resulted in a loss of seniority. During the relevant time period 245 applicants sought such transfer. Of that number, 13 were black for a percentage of 25.3%. 101 of the applicants were accepted, of whom five were black, for a percentage of 5.0%.

11. Evidence was presented of a study conducted of 3,069 employees of whom 754 or 24.6% were black. During the period January 1, 1969 to March 2, 1977, 1,063 of these employees were promoted. 288, or 27.1% were black employees.

While both sides presented additional voluminous statistics, the Court has considered them in light of the admonition of the Supreme Court of the United States in Teamsters v. United States, 431 U.S. 324 that "their usefulness depends on all the surrounding facts and circumstances." Supra at 340.

E. INDIVIDUAL CLAIMS

Four of the named plaintiffs, John Stevenson, John Cooper, Albert Cooper, and Charles Sloan, made individual allegations of discrimination, harassment, and retaliation in addition to the class claims. The plaintiffs did not meet the burden of proof regarding any of these allegations.

These individual complaints are either barred by the statute of limitations or largely unsupported by any evidence other than that individual's own testimony. In each

instance there is convincing contradictory testimony by the defendant.

II

CONCLUSIONS OF LAW

A. The Court has jurisdiction in this action pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. and 42 U.S.C. §1981. All the jurisdictional prerequisites to the filing of a Title VI action have been met. Defendant General Electric is an "employer" and defendants Lodge 912 of the IAM and Local 647 of the UAW are "labor organizations" within the meaning of the statute.

B. The named plaintiff in this action, John R. Stevenson, filed charges with the EEOC on September 2, 1969. Where a litigant filed charges with the EEOC in 1969, he and the class he represents are limited to matters occurring no more than ninety days prior to such filing. All Title VII claims prior to June 4, 1969 are barred by the statute of limitations. See United Airlines v. Evans, 431 U.S. 553 (1977).

Claims brought under 42 U.S.C. §1981 and §1985 are governed by the appropriate state statute of limitations.

In Ohio, §1981 actions are governed by a six-year statute of limitations, Mason v. Owens-Illinois, 517 F.2d 520 (6th Cir. 1975). By logic, §1985 actions should be included in a six-year period, Carmicle v. Weddle, 555 F.2d 554 (6th Cir. 1977). All §1981 and §1985 claims prior to March 2, 1971 are barred by statutes of limitations.

C. To maintain a claim under 42 U.S.C. §1985, plaintiffs have a threshhold burden of proving the existence of a conspiracy. See Griffin v. Breckenridge, 403 U.S. 88 (1971). No evidence of any conspiratorial conduct by the defendants was presented.

D. The establishment of a prima facie case of discrimination in violation of Title VII of the Civil Rights Act of 1964 in accordance with McDonnell Douglas v. Green, 411 U.S. 792, is not the equivalent of a finding of discrimination. Furnco Construction Corp. v. Waters, 438 U.S. 567.

Where, as here, plaintiffs established a prima facie case, defendant successfully rebutted such case and plaintiff failed to demonstrate that defendant's rebuttal was merely a pretext for discrimination, plaintiffs' complaint for Title VII discrimination should be dismissed.

The failure to establish class claims of discrimination under 42 U.S.C. §1981 or individual claims of disparate treatment requires dismissal of such claims.

E. A grievance system in a large manufacturing plant dependent upon personal policies of numerous shop stewards, is not thereby discriminatory. In the absence of evidence of disparate treatment or impact or of racial motivation in the administration of such system, plaintiffs' claims in regard to such grievances should be dismissed.

F. In the absence of evidence of claims against defendant IAM during the relevant time period, such defendant should be dismissed.

G. Based on the evidence presented, the Court finds no discrimination, harassment, or retaliation by the defendants against these plaintiffs. Accordingly, the individual claims of John Stevenson, John Cooper, Albert Cooper, and Charles Sloan should be dismissed.

H. In view of Conclusions of Law A-G, inclusive, plaintiffs' complaint as to all claims and as to all defendants should be and it is hereby DISMISSED at plaintiffs costs.

It is so ORDERED.

Carl B. Rubin, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO

JOHN R. STEVENSON, et al., Plaintiffs	)	Civil Action File No. C-1-77-122
vs.	)	
GENERAL ELECTRIC COMPANY, et al., Defendants	)	JUDGMENT

This action came on for trial before the Court, Honorable Carl B. Rubin, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered.

It is Ordered and Adjudged that the plaintiff take nothing, that the action be dismissed on the merits at plaintiffs' costs.

Dated at Cincinnati, Ohio, this 4th day of September, 1980.

JOHN D. LYTER
Clerk of Court

By: /s/ Rebecca E. Anderson
Rebecca E. Anderson, Deputy

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-3(a)

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

42 U.S.C. § 2000e-2(a)

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to

his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(c)

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employ-

ment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

42 U.S.C. § 2000e-2(h)

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an

intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such differentiation is authorized by the provisions of section 206(d) of Title 29.

42 U.S.C. § 2000e-2(j)

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such

individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

Amendment V to the Constitution of the United States of America

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be

twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

42 U.S.C. §1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Fed. Rules Civ. Proc, rule 34, 28 U.S.C.A.

Upon motion of any party showing good cause therefor and upon notice to all other parties, and subject to the provisions of Rule 30(b), the court in which an action is pending may (1) order any party to produce

and permit the inspection and coping or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b) and which are in his possession, custody, or control; or (2) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation theron within the scope of the examination permitted by Rule 26(b). The order shall specify the time, place, and manner of making the inspection and taking the copies and photographs and may prescribe such terms and conditions as are just.

As amended Dec. 27, 1946, effective March 19, 1948.

U.S. Sup. Ct. Rule 17(a)

When a federal court of appeals has rendered a decision in conflict with the decision of another

federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

U.S. Sup. Ct. Rule 17(c)

When a state court or federal court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

FEDERAL RULES OF CIVIL PROCEDURE, Rule 52, 28 U.S.C.A.
Findings by the Court

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing

interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

TABLE I

LIST OF GRIEVANCES FILED BY BLACKS

EXHIBITS	NAME	FILED
Pl. Ex. 70	Buford Harvey	10/5/65
Nature: Upgrade		
Disposition: 3/3/67 - settled		
Pl. Ex. 226	Raymond Hughes	2/6/69
Nature: Upgrade		
Disposition: Pulled and held		
Pl. Ex. 99	W.L. Battiste	5/9/63
Nature: C.R.		
Disposition: Denied 1967		
Pl. Ex. 127	Melvin Satterwhite	9/10/65
Nature: Upgrade		
Disposition: 3/30/67 - pulled		
Pl. Ex. 128	S. Satterwhite	5/25/67
Nature: C.R.		
Disposition: 11/27/67 - denied		
UAW Ex. 171	John Cooper	2/6/78
Nature: C.R.		
Disposition: 1/1/80 - still pending		

Pl. Ex. 47(bb) Neze B. Tate 9/23/72

Nature: Downgrade

Disposition: 4/6/73 - requested arbit.

Pl. Ex. 151 Melvin Hayes 3/6/78

Nature: Upgrade

Disposition: Testing

UAW Ex. 120 John Cooper 4/22/71
(Pl. Ex. 39(a)

Nature: Upgrade

Disposition: 3/13/74 - forced settlement

Pl. Ex. 238&67 Group Grievance 1/22/75

Nature: Race

Disposition: 4/28/76 - denied

Pl. Ex. 47(m) Neze B. Tate 3/25/76

Nature: C.R.

Disposition: 11/12/76 - at second held

Pl. Ex. 47(c&m) Neze B. Tate 12/5/74

Nature: C.R.

Disposition: 12/12/75 - closed

Pl. Ex. 107 Louis Curtis 3//3/70

Nature: C.R.

Disposition: 1/24/72 - 3rd step

Pl. Ex. 66 Melvin Taylor 1/31/74

Nature: C.R.

Disposition: 10/3/75 - co. took back

Pl. Ex. 106 R. Crawley 8/5/69

Nature: C.R.

Disposition: 6/9/70 - third step

Pl. Ex. 61 J.L. Grayson 10/22/71

Nature: C.R.

Disposition: 12/6/72 - denied

Pl. Ex. 73 Wilbur Downs 4/16/71

Nature: C.R.

Disposition: 12/8/72 - denied

Pl. Ex. 275 R.H. Robinson 11/8/74

Nature: C.R.

Disposition: 4/1/77 - denied

Pl. Ex. 276 F.J. Wellman 12/30/70

Nature: C.R.

Disposition: 9/1/72 - denied

Pl. Ex. 278 Morris Lovette 6/7/72

Nature: C.R.

Disposition: 5/5/75 - settled

Pl. Ex. 279 Paul White 2/25/71

Nature: Downgrade

Disposition: 12/22/71 - denied

UAW Ex. 336 W. Wynn 6/19/73

Nature: C.R.

Disposition: 4/19/76 - settled

Pl. Ex. 118 G. Lee 6/19/70

Nature: C.R.

Disposition: 4/23/71 - union took back

B. Walker 1/21/74

Nature: C.R.

Disposition: 11/4/76 - settled

Pl. Ex. 102 J. Carrington 1/19/72

Nature: Upgrade

Disposition: 12/8/72

Pl. Ex. 347(a) A. Battle 4/5/74

Nature: C.R.

Disposition: 9/12/72 - union took back

Pl. Ex. 347(b) Neze B. Tate 4/25/70

Nature: C.R.

Disposition: 4/3/72

Pl. Ex. 347(d) Leon Walker 10/14/72

Nature: Upgrade

Disposition: 2/26/74

Pl. Ex. 347(e) Andrew Battle 9/20/71

Nature: C.R.

Disposition: 2/22/73

Pl. Ex. 347(f) Bobby Gaines 2/2/71

Nature: C.R.

Disposition: 3/15/73 - union took back

Pl. Ex. 272 Estelle Williams 7/14/70

Nature: C.R.

Disposition: 3/26/72 - denied

Pl. Ex. 349(a) S. Jackson 10/11/73

Nature: C.R.

Disposition: 2/6/75 - denied

Pl. Ex. 349(b) P. Knight 7/12/72

Nature: C.R.

Disposition: 2/9/76 - union took back

TABLE IV

COMPARISON OF WHITE AND BLACK EMPLOYEES
UPGRADED FROM UAW OR HIRED INTO IAM POSITIONS
FROM 1969 - 1978

Taken from 1978 IAM Seniority List

	Black	White
Electrician Maintenance & Repair	0	13
Electrician	1	25
Machine Repair	0	21
Locksmith	0	1
Mason	0	1
Millwright	1	23
Plumber & Pipefitter	1	21
Refrigeration and A/C Repair	0	10
Garage Man	0	1
Mechanic - Auto & Truck	1	3
Office Machine Repair	0	1
S/M Maintenance	0	3
Carpenter	0	1
Painter Maintenance	1	10
Machine Apprentice	2	18
Grinder Tool	2	39
Grind & Reset B/C	0	3
Machinist	5	72

Bench Repair Pts.	0	5
Welder Div.	1	18
Sheet Metal	0	21
El Tube & Noz Maker	0	7
Air Sup Op Turbo	0	3
TOTAL	15	320

A. The RFU system was planned and it was instituted approximately 20 years ago. That would be in late 1956 and the early part of 1957 the request for upgrade system was instituted.

Q. And that would be in both unions, both the IAM and the UAW?

A. That is correct, sir.

Q. And prior to that time, between let's say when the plant started in '48 and '56, are you aware what the system was at that time?

MR. ENGEMAN: Objection, Your Honor, time frame.

THE COURT: Sustained.

MR. TAMARKIN: Your Honor, I know, but I hate to make this comment for the record, that I believe we are going back to the genesis now of this system, and I believe it's relevant under evidence in Teamsters. I will proffer what I believe the answer would be.

THE COURT: You are free to proffer. (The following testimony was proffered into the record: I believe the system is that there was no written request of any type and individuals would be upgraded when the foreman requested or told them a job was open, and basically by word of mouth only. There was no minimum

criteria to meet at that time.)

BY MR. TAMARKIN:

Q. And during the period, sir, from 1948 through '52, isn't it true that all black employees, or 98 percent of black employees were hired in janitorial positions?

MR. ENGEMAN: Objection, Your Honor.

THE COURT: Sustained.

(The following testimony was proffered into the record: The answer would be yes.)

MR. TAMARKIN: Plaintiff's Exhibit 92. Your Honor, this is an exhibit dated '57, and I will just ask one question, and I will submit it to proffer.

MR. TAMARKIN: I agree with you --

THE COURT: This is a disparate impact.

MR. TAMARKIN: I agree with you, Your Honor, there are two issues, but I believe seniority does not deal with the genesis, but I believe some aspects of the seniority system deal with the maintenance of that system, and that's my position. I believe I have tried to put on some evidence to that effect.

THE COURT: I take the same position that I have heretofore as to that.

Gentlemen, do any of counsel wish to be heard on this?

MR. ENGEMAN: Your Honor, obviously we except to the ruling that he may be permitted to inquire into events in I assume you intend in 1949, which would be the genesis of the seniority system.

THE COURT: No, I am not permitting it as to seniority — well, now I'm beginning to get confused.

The creation of two unions is an appropriate inquiry in terms of discriminatory intent, and I will permit testimony bearing upon discriminatory intent. I think that events of 1949 are highly attenuated, but I won't go into that at the moment.

THE COURT: Mr. Tamarkin, I am simply not going to debate with you what your evidence is. I am saying to you if you wish to present evidence of a discriminatory intent as to the establishment of two unions, you may do so.

MR. TAMARKIN: Well, I must except then to the Court's ruling that I cannot show the maintenance of that system also.

THE COURT: Feel free to except to anything you would like to except to. That is the ruling I am proposing at this time.

MR. TAMARKIN: Then will the Court permit me to recall some witnesses to go into that subject that I have already put on the stand?

THE COURT: Mr. Tamarkin, I am telling you what my ruling is. You may call whatever witnesses you see fit.

MR. TAMARKIN: Thank you, Your Honor.

THE COURT: There is another critical issue that you have established. You are asserting these are non-bona fide seniority systems, and you may present evidence of that, but the evidence of non-bona fide is not acts of discrimination.

MR. TAMARKIN: One thing, Your Honor. In the Pullman case, the Fifth Circuit interpreted Teamsters, and they interpreted that the burden of proof shifts to the Defendants to prove a bona fide seniority system.

THE COURT: The Fifth Circuit is persuasive only. It is not binding on this Court and interpretations of Teamsters by other circuits are matters I look at with great skepticism.

I will make my point once more, and only once more. I will hear from this witness as to anything he wishes to testify to, but if it is acts of discrimination, it must be limited by the statute. If it is acts as to the bona fides of the seniority system, let it be that and not a disguise of the acts of discrimination.

MR. TAMARKIN: I believe the answer would be that the criteria was put in because of the objections of several minorities concerning the upgrading of individuals without any type of criteria.

(End of proffer.)

MR. TAMARKIN: I would like to hand the witness Exhibit 156, that's a group of seniority lists, Your Honor.

MR. ENGEMAN: For the record, Your Honor, while we are on 155, I will make the identical objection to 155-A, it's beyond the time-frame.

THE COURT: I'm sorry, I didn't hear the objection.

MR. ENGEMAN: I'm sorry, Your Honor, I wasn't speaking clearly. As we are on 155 and are leaving 155, I will make the objections I made to 154, that is, i.e., 155-A is irrelevant as beyond the time-frame.

THE COURT: At this moment, I'm inclined to agree with you. I think that the portions of Exhibit 154 covering the period 1966, 1967 and 1968 are not relevant. And the portions of 155 covering the period 1968 are not relevant. 1969 is peripherally -- may be relevant for one purpose and not for another. And I will sustain your objections as to those portions prior to 1969.

MR. TAMARKIN: I would proffer the document.

and I don't recall what series of discussions, I'm sure they occurred, but I can't recall what they were in '66.

THE COURT: I'm not interested in the details. I am trying to figure out how this came about. This was not solely developed by management, was it? Or was it?

THE WITNESS: Principally, yes, sir.

THE COURT: I see. And did it ever become part of negotiations with the Union as part of a collective bargaining agreement?

THE WITNESS: The minimum criteria are not referenced in the collective bargaining agreement.

THE COURT: Okay, you may proceed.

BY MR. TAMARKIN:

Q. Why was the minimum criteria instituted, sir, in 1966?

MR. ENGEMAN: Objection, your Honor. It's beyond the time frame.

THE COURT: Sustained.

MR. TAMARKIN: May I proffer the answer, your Honor?

THE COURT: Feel free.

(The following testimony was proffered into the record.)

What is the reason for the fact that the IAM unit was somewhere between 1 and 2 percent black in 1973?

MR. ENGEMAN: Objection, Your Honor. That is a question calling for a legal conclusion.

THE COURT: Well, I am going to overrule the objection. You may respond if you know the answer.

THE WITNESS: I am not aware of any purpose, business or otherwise.

MR. TAMARKIN: Many of the union witnesses testified to the fact, without supporting these things that the union treats whites the same as blacks.

Now, let me point out that the union gave me a witness list prior to their direct examination and gave it to the Court of over 34 witnesses, including all stewards and committeemen.

I suggest to the Court that I did the best I could in taking and trying to find out who was the most important witness in taking their depositions, but the cost of this case and the actions of the union in this matter and giving witness summaries and then not coming in with any of these people, and the only one of their people I did not call was Jerry Horton. I had to make a decision at that time which of these witnesses were important and what they had to do.

Mr. Horton may have been an oversight, but I did not call him for a deposition. They put him on and, of course, because I didn't take his deposition, I was not prepared to cross-examine him fully.

I do not believe that he himself ever testified to the fact of his time. He testified a lot about grievances. He had a statistical report ready to bring in time which shows something. He didn't put it on. I

don't believe I could have cross-examined him at that point on this.

But there has been numerous UAW witnesses who have testified to the general assertion that the UAW processes grievances for blacks the same as whites. The evidence I propose to elicit, which the Court has overruled, is that that is not true, that it takes six — that the average is five months; and I will submit civil rights grievances to show that they do take a lot longer, and I will do that if I can, but I believe it has been unfair to these plaintiffs in what the union has proceeded in this manner by giving me this list of witnesses and their summaries.

THE COURT: Mr. Tamarkin, I make the same point I made I believe this morning. If this case had proceeded as a case normally would, you would have been called upon to do rebuttal immediately after the end of plaintiffs' case —

MR. TAMARKIN: Yes.

THE COURT: — and I would have taken the same position then that I am taking now. Where you had the opportunity to cross-examine Mr. Horton, I do not believe it's appropriate that you recall him in rebuttal to do what could have been done on cross-examination.

THE COURT: You may proffer. I am not going to require -- Your position is the same as it would always be, incidentally, and that a proffer on cross-examination, my understanding under Ohio law at least, is not permitted. But go ahead. I will let you proffer whatever you want to say.

MR. TAMARKIN: I don't believe I am calling him on cross-examination. I believe I am calling him for one specific purpose, and that is to identify an exhibit, a UAW exhibit, and that is all.

THE COURT: What is that exhibit, Mr. Tamarkin, because he has not identified an exhibit that I am aware of.

MR. TAMARKIN: Exhibit No. 314 of my exhibits and it's the UAW exhibit --

MR. SALES: 342, I believe.

THE COURT: Just a moment.

MR. SALES: 341. Your Honor, that is the statistical analysis or part of statistical analysis that was prepared by Lee Price. Mr. Horton supplied the data from which that analysis was made by Mr. Price. That exhibit was withdrawn by the UAW. It was never admitted

into the testimony. It's not in the case to be rebutted at this point; and our position is very simply that, as you recognized, as you elicited from Mr. Horton, that you felt that the underlying data was simply too inaccurate to form any opinions based upon this analysis. And the analysis isn't in the record. We withdraw it formally. I stood up right there and withdrew it.

MR. TAMARKIN: Pardon me, your Honor. I disagree with that. What we put on the record was the fact we couldn't determine whether blacks or whites were filing the grievances; that the time analysis, it takes each individual grievance, no matter if they are black or white, and says what time will they be denied or settled at the third step. That is that. It doesn't matter if they are black or white on that determination because all the grievances take the same thing as the analysis that Mr. Horton was taking. That was not ruled out.

THE COURT: Well, just a moment. The only exhibit that I am aware of is 341, the statistical handling of grievances.

MR. TAMARKIN: 342.

THE COURT: I have 341.

MR. TAMARKIN: Yes, but 342 is the one I am referring to, time study.

THE COURT: If Mr. Sales says that has been withdrawn, then it's withdrawn. There is no need to rebut it. Now, are you denying that it was withdrawn?

MR. TAMARKIN: Yes, I am denying it was withdrawn.

THE COURT: Mr. Sales, do you wish to withdraw it at this time so there be no question?

MR. SALES: Your Honor, I believe I have already done it but, if needs to be done, I will withdraw it.

THE COURT: It is withdrawn. Now, Mr. Tamarkin, go on from there.

MR. TAMARKIN: Your Honor, my next witness -- now, I will go ahead -- I will check with my folks to see whether I should withdraw as counsel. As long as I am here, I will go ahead.

THE COURT: I do point out to you, Mr. Tamarkin, it is highly unlikely that I would grant such a motion. I think that is something less than proper. Call your next witness, please.

A. From my experience at General Electric Company, I knew that it was useless to apply for the IAM because with my time in the UAW, I would have to lose 26 years to go into the IAM.

Q. And when you first started at General Electric, sir, why did you not apply for an IAM position at that time when you didn't have to lose any seniority?

MR. BARTY: Objection

MR. FOX: Objection

THE COURT: Objection sustained until you determine what the date was that he was employed.

MR. TAMARKIN: It was back in '51, Your Honor.

THE COURT: Objection sustained

MR. TAMARKIN: I will proffer it.

(The following is a proffer by Mr. Tamarkin: The answer would be General Electric was only hiring blacks on the broom, and I needed a job, and they wouldn't hire any blacks into that unit whatsoever. So, it was a useless act.)

DEFENDANT GENERAL ELECTRIC CO.
SUPPLEMENTAL EXHIBIT LIST

GE 18 - Hourly Job Displacement and Upgrade Charts

GE 19(a) - Employee Conv. Report (W. Kelly)

GE 19(b) - Downgrade Report (W. Kelly)

GE 20 - Interview Guide (H. Greene)

GE 21(a) - Letter, R. Marcus to E. Carpenter (8/30/76)

GE 21(b) - Letter, R. Marcus to E. Carpenter (9/6/76)

GE 21(c) - Downgrade Memo (J. Penny)

GE 22(a) - Discussion Memo (S. Mays)

GE 22(b) - Exempt Placement Recommendation (S. Mays)

GE 22(c) - Letter, A. Sciarappa to D. Speakes (3/26/71)

GE 23 - SNU Reports (1974-77)

GE 24 - Study of Black/White UAW Upward Mobility 1-1-69 to 3-2-77, Dr. Neil Churchill

GE 25 - Professional Biography, Dr. Neil Churchill

GE 26 - Charts I-V, re B. Meyer Testimony

GE 27 - Your Guide to Growth Pamphlet

GE 28 - Apprentice Training Program Pamphlet

GE 29 - Individual Development Program Pamphlet

GE 30 - Affirmative Action Policy Guide No. 54

GE 31 - Class "B" Work Classification and Medical Restriction Card

GE 32 - GE/EEOC Conciliation Agreement

GE 33 - Individual Development Program Data (1973-75)

GE 34 - GE In-Plant Training (1969-77)

GE 35(a) - Self Nomination for Upgrading Card

GE 35(b) - Self Nomination for Upgrading Pamphlet

GE 36 - Mfg. Dev. Program Brochure

GE 37 - Mfg. Management Program Brochure

GE 38 - Apprentice Program Graduates (1969-77)

GE 39 - Foreman Assessment Center

CERTIFICATE FOR SERVICE

I hereby certify that I have served copies of the foregoing Motion of Defendant General Electric Co. to amend its Exhibit List upon Ivan L. Tamarkin, Esq., 1403 First National Bank Bldg., Cincinnati, Ohio 45202; Paul H. Tobias, Esq., 911 First National Bank Bldg., Cincinnati, Ohio 45202 by hand delivery this 5th day of November, 1979, and upon Herbert Segal, Esq., Third Floor, M.E. Taylor Building, Louisville, Kentucky 40202 by certified mail, return receipt requested, this 5th day of November, 1979.

THE COURT: Mr. Tamarkin, I will hear from you.

MR. TAMARKIN: Your Honor, the original subpoena was sent to General Electric and given to Mr. Barty on December 20, not the 27th.

I had a meeting with Mr. Engeman to discuss this, and we tried to work it out, and I reissued the subpoena on the 27th.

THE COURT: I know, but you are seeking matters that have been disposed of.

MR. TAMARKIN: I don't believe all of them have been disposed of.

THE COURT: But some of them have. For example, I heard the term affirmative action.

MR. TAMARKIN: I am only seeking it for the purpose of proffering it.

THE COURT: But you have no right to subpoena a matter that the Court has held to be inadmissible, have you?

MR. TAMARKIN: Yes, to proffer it, I believe I do.

THE COURT: I am going to sustain it as to that.

Now, I also heard references to the seniority

list. There is a huge stack almost a foot high on the desk.